

## **INDICTABLE OFFENCES**

### **Inquiry into a teacher's fitness to teach**

If the Victorian Institute of Teaching (the Institute) is informed that a teacher has been convicted or found guilty of an indictable offence, other than a sexual offence (for more information on sexual offences see the brochure entitled "Sexual Offences"), the Institute **must** conduct an inquiry and investigation into the registered teacher's fitness to teach.

### **What is an indictable offence?**

An indictable offence is an offence punishable by a term of imprisonment of five years or more or a fine of \$71,600 or more or both. Offences under the *Crimes Act 1958* and the *Wrongs Act 1958* are indictable offences unless categorised as summary offences. Examples of indictable offences include culpable driving, theft, intentionally causing serious injury, trafficking in a drug of dependence, stalking and assault.

### **Conviction or finding of guilt**

A court may find a person guilty of an offence but decide not to record a conviction. A teacher who is convicted **or** found guilty of an indictable offence will be the subject of an inquiry by the Institute.

### **Who must notify the Institute of the indictable offence?**

A registered teacher committed for trial, convicted or found guilty in relation to an indictable offence must notify the Institute within 30 days after the committal, conviction or finding of guilt. Failure to notify is an offence in itself.

The Institute may be notified of an indictable offence by the teacher's employer, Victoria Police, other teachers or a member of the public. The Chief Commissioner of Police is required to notify the Institute if a registered teacher has been charged with, committed for trial, found guilty or convicted of certain violent or drug offences.

The Institute is also required to carry out police record checks from time to time on all registered teachers.

### **All relevant information**

Before deciding whether to conduct a formal hearing, the Institute will collect all information relevant to the indictable offence. The Institute may ask the police or the sentencing court to provide further information.

## **The formal hearing**

If the matter is referred to a formal hearing, the Institute appoints a panel of at least three members to hold the formal hearing. One member of the panel (the Chairperson) will be a member or former member of the Council and the second member will be a registered teacher. The other members may be registered teachers, including principals, or members with special expertise in law, curriculum, special education, etc.

The teacher will be advised of the nature of the offence and the date, time and place of the formal hearing. The teacher has a right to attend the hearing and to be represented and make submissions to the panel.

The procedure at the hearing, which takes place in a hearing room, is in the discretion of the panel and must be conducted with as little formality and technicality as possible. Although the panel is not bound by the rules of evidence and may inform itself as it thinks fit, it is bound by the rules of natural justice (for further details see the brochure entitled “Rules of Natural Justice”).

The teacher has the right to be represented at the hearing and may be represented by a legal practitioner, a union official or any other person. Counsel Assisting, instructed by a legal officer of the Institute, will appear for the purposes of assisting the panel, to question any witnesses and to make submissions on the evidence and the law relevant to the matter.

The complainant and other witnesses may attend to give evidence. Evidence is given on oath.

If necessary, the panel can issue a summons requiring a witness to attend the hearing to give evidence or to provide relevant documents. Witnesses will wait outside the hearing room until asked to give evidence. Witnesses will give their evidence and may be questioned by the teacher or the teacher’s representative, Counsel Assisting the Institute and the panel. The Panel will be assisted by a barrister (Counsel Assisting). The role of the Counsel Assisting is to put before the Panel the information that has been obtained as a result of the investigation.

The hearing is open to the public, unless the panel decides to close the hearing because the evidence being given is of an intimate, personal or financial nature. An open hearing means that the public, including the press, can attend.

If the hearing is closed, the panel may decide that the identity of witnesses should not be published or broadcast. The panel may also decide to suppress the teacher’s name until the final decision is made.

## **The powers of the panel**

The panel may summons witnesses, require witnesses to produce documents and require the complainant, the teacher and other witnesses to give sworn evidence.

## **The conduct of the hearing**

- The hearing will be conducted in a hearing room similar to a court room.
- Witnesses will wait outside the hearing room until asked to give evidence.
- The Panel will introduce themselves
- Counsel Assisting and the teacher or their representative may present submissions to the Panel.
- Witnesses will give their evidence and may be questioned by the teacher or their representative and the Panel.
- Counsel Assisting and the teacher or their representative may summarise the evidence and make submissions on the law.
- The complainant may provide a submission if the Panel has given permission.

## **THE PANEL'S DECISION**

Although the panel may make a decision on the day of the hearing it will usually reserve its decision. This is to allow sufficient time for the panel to consider all the evidence and to prepare its reasons.

After considering all the submissions made at the hearing the panel may make findings about whether or not:

- (a) the teacher is seriously incompetent in his or her teaching practice; or
- (b) the teacher is not fit to teach; or
- (c) the teacher is guilty of misconduct or serious misconduct.

The panel may make a determination to do one or more of the following:

- dismiss the allegation
- caution the teacher
- reprimand the teacher
- refer the matter to a medical panel hearing, if the panel is of the opinion that the teacher's ability to teach is seriously detrimentally affected or likely to be seriously detrimentally affected because of an impairment
- impose conditions, limitations or restrictions on the registration of the teacher including a condition that the teacher undergo counseling or undertake and complete specified further education or training within a specified period
- suspend the teacher's registration for a period with or without conditions

- cancel the teacher's registration
- disqualify the teacher from applying for registration within a specified period if the teacher's registration is cancelled by the panel.

### **The decision and the reasons**

Within 28 days of the Panel making its decision, it will send a copy of the decision and reasons to the complainant and the teacher.

### **Notice of the decision**

The Institute will give notice of its decision:

- In the Government Gazette
- To teacher registration authorities in all other States or Territories of the Commonwealth and New Zealand.
- To the teacher's employer
- Department of Justice
- Department of Transport
- Upon request to a teacher registration authority outside Australia or New Zealand.

The Register of Teachers will be amended to show that the teacher's registration has conditions, limitations or restrictions, has been suspended for a period with or without conditions, or has been cancelled.

### **Publication of the decision**

A sanitised copy of the Panel decision will be published on the Institute's website. Sanitising a decision means that information such as names that would identify a person has been taken out and replaced with a pseudonym.

### **Appeal to the Victorian Civil and Administrative Tribunal**

If the teacher disagrees with the decision of the Panel, they have the right to request review by the Victorian Civil and Administrative Tribunal (the VCAT). If you require information about this process please contact the VCAT on 03 9628 9755.

## **FURTHER INFORMATION**

The Institute also has other information brochures available on:

- complaints
- an employer taking action against a teacher
- the investigation
- the formal hearing process
- appeals to the Victorian Civil and Administrative Tribunal
- witnesses
- sexual offences
- indictable offences
- the rules of natural justice

## **CONTACTS**

Victorian Institute of Teaching  
PO Box 531  
Collins Street West, Victoria 8007  
Telephone 1300 888 067  
Facsimile 03 86015803

Level 24 Marland House  
570 Bourke Street  
Melbourne Victoria 3000  
[www.vit.vic.edu.au](http://www.vit.vic.edu.au)